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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,964	06/07/2006	Antonio Ricci	72270	7292

23872 7590 09/27/2010

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ART UNIT	PAPER NUMBER
1797	

MAIL DATE	DELIVERY MODE
09/27/2010	PAPER

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/581,964
Filing Date: June 07, 2006
Appellant(s): RICCI ET AL.

Ricci et al.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/19/2010 appealing from the Office action mailed 1/22/2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-7, 16-30, 32-34, 41-44, 46, 48-52 are on appeal.

Claim 45 has been withdrawn.

Claims 12 and 35-40 have been cancelled.

Claims 1-7, 16, 17, 21-28, 41-44, 46, and 48-52 have been rejected under 35 U.S.C. 102(b) as being anticipated by Skotnikov et al. (US 5526705).

Claims 18-20 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Skomikov et al. in view of Kaarkainen et al. (US 6,520,313).

Claims 29, 30 and 32-34 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Skomikov et al. in view of Coulter et al. (US 4,609,017).

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS."

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. Claims 8-11, 13-15, 31, and 47.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

5526705	Skotnikov et al.	6-1996
6520313	Kaarakainen	2-2003
4609017	Coulter et al.	9-1986

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7, 16, 17, 21-28, 41-44, 46, and 48-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Skotnikov et al. (US 5526705).

Appellant should note that the recitation in the preamble for measuring sedimentation rate in biological samples and in especially blood samples has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). The prior art has been applied appropriately.

With regard to claims 1, 44, 48, and 51, Skotnikov et al. in Figure 1 teach holders (i.e., links in the belt (36) Col. 10 line 20-22) for test tubes (vessels (32) containing samples of biological fluids; agitator devices (40, 50, 100) for agitating said test tubes (32); at least one detector (78, 180 as an example) that are capable of detecting the levels inside said test tubes; characterized in that wherein said holders (links in the belt sized to snugly fit about an outer perimeter of vessels 32) are formed in a continuous flexible member (Figure 3) defining a closed path, along which said agitator devices (Figure 1 40, 50 and 100) and said at least one detector (78, Fig.1) are arranged.

With regard to claim 1's new limitations, Skotnikov teach FIG. 1 that is a schematic representation of automated work station 10 according to the present invention. Automated work station 10 includes sample preparation station (or line) 12 and a plurality of test stations, or testing lines A, B, C, D, F, G, H and J each with various detectors (i.e., at least one and two detectors). Test station A determines soil acidity, test station B determines soil carbon content, test station C is used to prepare a soil extract which is eventually provided to ion-selective flow sensors for the determination of nutrients and micronutrients in the sample, test station F determines alkali soluble fraction of organic matters, test station G is used to determine organic matter, test station H is used to determine sesquioxides, and test station J is used to determine dust, sand and physical clay in the sample. Various detectors (i.e., sensors) in the testing lines are coupled to controller interface 14 which is, in turn, coupled to controller 16.

With regard to claim 2, Skotnikov et al. teaches agitators (40, 50, and 100) (Col. 4 lines 16-22). 100 is taught to be a dedicated stirrer (Col. 6 line 50).

With regard to claims 3 and 41, Skotnikov et al. teach the following are arranged along the closed path of the device: one agitating area (Fig. 1, 45, 50, 100) at least one sedimentation area (following each of 45, 50, and 100 in Fig. 1); And at least one reading area wherein said detector is installed (78 in Fig. 1).

With regard to claims 4, 42, and 43, the flexible member (36) lies along a horizontal plane.

With regard to claims 5-7, 46, 49, 50, and 52 Skotnikov teach that the holders fit within a flexible member (i.e., each of the testing lines A-J in Figure 1) and the holders represent the links that fit each outside perimeter of each vessel (Col. 10) and further that within these links

oscillation (i.e. agitation) is possible at various locations (stations) within the device (e.g. 40, 50, 100) outside the plane on which the flexible member lies.

With regard to claim 10-12, Skotnikov teach agitators (i.e. 40, 50, 100 and sprockets (140) Fig. 3) that act as guides. The intersection with the conveyor holders can be viewed as "sliding shoes" and are slidingly engaged in the absence of a figure showing that which appellant intends to be claiming with this recitation. Skotnikov also teach agitating fixed guides in the form of sprockets 140 (rotor coaxial in Fig. 3) and mobile guides that are arranged to induce agitation in the form of 40, 50, and 100. The sprockets are shown in Fig 3 to be provided with elements for engaging the holders and capable of rotating around its own axis.

With regard to claims 16 and 17, Skotnikov teach FIG. 1 that is a schematic representation of automated work station 10 according to the present invention. Automated work station 10 includes sample preparation station (or line) 12 and a plurality of test stations, or testing lines A, B, C, D, F, G, H and J each with various detectors. Test station A determines soil acidity, test station B determines soil carbon content, test station C is used to prepare a soil extract which is eventually provided to ion-selective flow sensors for the determination of nutrients and micronutrients in the sample, test station F determines alkali soluble fraction of organic matters, test station G is used to determine organic matter, test station H is used to determine sesquioxides, and test station J is used to determine dust, sand and physical clay in the sample. Various detectors (i.e., sensors) in the testing lines are coupled to controller interface 14 which is, in turn, coupled to controller 16.

With regard to claims 21-28, appellant should note that a recitation of the intended use such as those recited for the automatic manipulator of the claimed invention must result in a

structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regard to claim 21, Skotnikov teach a robotic manipulator that removes vessels 32 from their holders in the conveyor 36 and replaces vessels 32 in conveyor 36 (Column 10 lines 48-50).

With regard to claims 22-24, Skotnikov teach that separate robotic manipulators are used in line D and in test line J (Col. 10 line 60-61). Therefore there are 2 extractors taught that are capable of moving tubes into and out of the holder.

With regard to claims 25 and 26, Skotnikov teach a setup unit (i.e., a sample prep line (12)) that is above the continuous flexible member (Fig. 1 (36)).

With regard to claims 27 and 28, Skotnikov teach a controlling unit 16 that receives readings from the reading station, i.e., the humidity meter 28 (Col. 3 lines 45-52).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skotnikov et al. in view of Kaarakainen et al (US 6520313).

The teachings of Skotnikov et al can be seen above.

Skotnikov do not teach a transponder being associated with each holder and test tube, nor do they teach stations for scanning these transponders.

With regard to claims 18-20, Kaarakainen et al. teach transport bases or holders for test tubes (Fig. 1) that incorporate an RF memory circuit, in which data can be entered and read without contact in, for example, a control station, which can then decide which processing point to transfer the holder with test tube to (Col. 3 lines 1-3). Kaarakainen et al goes on to teach that the RF memory circuit, i.e., transponder can be read rapidly and as the small read/write sensor can be located almost anywhere, its location does not restrict the mechanical design of the system (Col. 3 lines 35-38).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to have incorporated the RF transponders and scanners of Kaarakainen et al into the device of Skotnikov et al. as Kaarakainen et al. provide the motivation that the transponders can be read rapidly and that the scanners can be located anywhere in the device which would allow for more efficient processing of samples and would avoid errors due to misidentification of the tubes within their holders.

Claims 29-30, and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skotnikov et al. in view of Coulter et al. (US 4609017).

The teachings of Skotnikov et al can be seen above.

Skotnikov do not teach a setup unit that comprises a first and second transfer unit with a first and second conveyor for moving a plurality of racks containing test tubes, and a reading unit associated with one of the two.

With regard to claims 29-30 and 32-34, Coulter teach in Figure 2 a setup unit that can be retrofit to an analyzer consisting of a plurality of racks (12) which are stacked vertically above a

first conveyor (i.e., input elevator (20)) Col. 4 lines 23-64. The racks are stripped one at a time from the bottom of the stack within the first transfer unit (16) and lowered by the first conveyor (i.e., elevator (20)) onto the second conveyor belt (32) and tilt table en route to the second transfer unit (40). Also, a reading unit is taught within this setup unit there at a time and place during, or just prior to sample aspiration, the identification of the sample is read (50) automatically for correlation with that sample's parameter measurements Col 8, lines 50-68).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to have incorporated the features of Coulter's setup unit into the setup unit of Skotnikov et al. as Coulter teaches his sample setup unit (i.e., sample carrier transport system) is capable of being housed in a stand-alone module, with the aspirated sample then being fed from this module into the main body of the analyzer and furthermore that such module configuration would be useful for retrofit with other styles of analyzers, such as one of Skotnikov et al. for example. Furthermore, the benefit exists that in Coulter's setup unit many samples may be handled in parallel without a manual step creating a more efficient, high throughput device.

(10) Response to Argument

ISSUE: Whether claims 1-7, 16, 17, 21-28, 41-44, 46, and 48 are rejectable under 35 U.S.C. 102(b) as being anticipated by Skotnikov et al. (US 5,526,705).

CLAIM 1

Appellant argues on page 19 of their brief that their "control unit advantageously determines an erythrocyte sedimentation rate of the fluids based on the levels of the fluid detected by the 2 detectors" and further that "this advantageously does not produce any liquid or solid waste since separate tubes do not have to be used to draw a sample of the blood to

determine the erythrocyte sedimentation rate" and that "the prior art as a whole fails to teach and fails to suggest such features or such waste saving advantages".

Respectfully, the Examiner maintains that not only are the argued limitations not claimed through a positively recited structure in the claims but also the appellant does not recite for example a "controller programmed/configured to carry out the process steps" as would be required in order for the intended use steps to receive more weight than they are as presently claimed. The appellant instead recites that "a control unit determining the erythrocyte sedimentation rate based on levels inside said test tubes detected by said first detector and said second detector". *Even arguendo*, if full patentable weight is given to these intended use recitations, Skotnikov et al. teach FIG. 1 that is a schematic representation of automated work station 10 according to the present invention that is capable of accomplishing these intended uses. Automated work station 10 includes sample preparation station (or line) 12 and a plurality of test stations, or testing lines A, B, C, D, F, G, H and J each with various detectors (i.e., meeting the limitation of at least one and two detectors). Test station A determines soil acidity, test station B determines soil carbon content, test station C is used to prepare a soil extract which is eventually provided to ion-selective flow sensors for the determination of nutrients and micronutrients in the sample, test station F determines alkali soluble fraction of organic matters, test station G is used to determine organic matter, test station H is used to determine sesquioxides, and test station J is used to determine dust, sand and physical clay in the sample. Various detectors (i.e., sensors) in the testing lines are coupled to controller interface 14 which is, in turn, coupled to controller 16.

Specifically line J is taught in Col. 6 lines 47-67 to be used along with its apparatus (102) and controller (16) following agitation with stirrer (100) "to measure the sedimentation kinetics of dust, sand and physical clay particles in the upper third of the vessel (32) for approximately one minute (i.e., rate is being interpreted as a magnitude or frequency relative to a time unit; i.e., the rate at which the dust, sand, and physical clay particles travel within the upper third of the vessel in one minute of time) and therefore is interpreted as being capable of detecting the levels of fluids in the test tubes and having a controller that is capable of determining the sedimentation rate based on levels inside said test tubes detected by said first detector and said second detector as claimed. Should appellant be intending to claim a device that requires 2 rates each retrieved from different detectors in order to calculate the sedimentation rate, the claim should be re-written to more clearly express this feature as a structural property of their device. As it is written, the Examiner is interpreting the recitation "based on levels inside test tubes detected by said first detector and said second detector" to require levels inside test tubes are detected from test tubes that had previously been detected by at least a first and second detector NOT that a measured level rate from each reading of each detector is being used by a controller programmed to calculate the sedimentation rate based on these respective level readings inside of the test tubes from the 2 detectors.

Next, while appellant concedes on the bottom of page 20 of the brief that Skotnikov et al. discloses various detectors for detecting different properties of soil, they argue that "there is no teaching or suggestion in Skotnikov that would direct a person of ordinary skill in the art toward 2 detectors that measure a level of biological fluids in a test tube that are moved along a closed path as claimed". Respectfully, it would appear that appellant is interpreting their claims

differently than the Examiner as the Examiner maintains that the above teachings of the Skotnikov et al. device reveal its capability of performing such claimed intended use steps.

Next appellant argues that Skotnikov et al. does not teach "sedimentation analysis or provide a teaching of features to provide such analysis". The Examiner does not see the recitation of "analysis" steps other than that which was addressed above as relating to the capability of generically measuring sedimentation rates. Should appellant desire a claim to various analysis features as argued they should look to add such a limitation to their claims.

Similarly, appellant argues that Skotnikov et al. does not teach or suggest a control unit that determines a sedimentation rate by "comparing data detected at two sequentially arranged spaced apart detection stations as featured in the present invention". It is not clear to the examiner where such a recitation exists within claim 1. It appears as though the appellant is potentially arguing a limitation of their disclosed invention that is not claimed.

Lastly with regard to appellant's arguments of claim 1 they assert that "claim 1 clearly provides that the control unit determines the erythrocyte sedimentation rate based on detection of fluid levels by two detectors". Again, this argued limitation does not appear to be claimed. Instead it appears that appellant claim "said control unit determining the erythrocyte sedimentation rate based on levels inside test tubes detected by said first detector and said second detector" NOT that a measured fluid or sediment level based rate from each reading of each of 2 detectors is being used by a controller programmed to calculate the sedimentation rate based on these respective level readings inside of the test tubes from the 2 detectors as appears is being argued.

CLAIM 2

With regard to claim 2, appellant argues:

Skotnikov et al. does not teach and does not suggest the combination of agitator devices that oscillate holders such that fluid in the holders is stirred. The final rejection takes the that stirrer 100 of Skotnikov et al. is the equivalent of one of the agitating devices of the present invention. Appellant respectfully disagrees with this interpretation of Skotnikov et al.

The final office action also asserts that Skotnikov et al. teaches pieces (e.g. 40, 50, in addition to 100) Col. 4 lines 16-22 as being stirrers, with only 100 being a dedicated stirrer. Specifically this citation teaches that agitator (40) is "placed relative to conveyor (36) to agitate the contents of vessel (32) at positions 5, 11, and 17". As can be seen in Figure 1 and via this description, the agitator (40 and 50) are not placed within the vessel as this citation teaches they are merely placed "relative to the conveyor to agitate the contents of vessel (32)". Furthermore, there is only a requirement in the claim 1 from which 2 depends that "said agitator devices, said first detector and said second detector being arranged in sequence along said path". This sequence is taught when agitators (40 and 50) are seen upstream of various first and second detectors in Figure 1 for example.

CLAIM 3

With regard to claim 3, appellant argues:

Skotnikov et al. does not provide any teaching or suggestion for any of the testing stations measuring a level of fluid in a test tube that is held by a holder as claimed.

First, the examiner is not aware of any recitation in claim 3 or claim 1 from which 3 depends that includes the limitation of a "testing stations" which is presently being argued. *Even arguendo*, assuming that the appellant is construing a reading area as a "testing station", Skotnikov et al.

teach the following are arranged along the closed path of the device: one agitating area (Fig. 1, 40, 50, 100) at least one sedimentation area (which are the areas following each of 40, 50, and 100 in Fig. 1); And at least one reading area wherein said detector is installed (78 in Fig. 1). The Examiner does not respectfully agree that the calorimeter (78) is inappropriately construed as a first or second detector that is capable of minimally "detecting the levels inside test tubes" which is required by independent claim 1. A calorimeter determines the level of organic matter content, which is interpreted as capable of a detecting a "level" nonetheless (Col. 6 lines 30-34).

CLAIM 4

With regard to claim 4, appellant argues:

Appellant respectfully disagrees with this interpretation of Skotnikov et al. Besides the fact that no biological level detecting detectors are arranged along the continuous conveyor 36 of Skotnikov et al., there is no teaching or suggestion that the continuous conveyor 36 is flexible as required in the claimed combination.

Figure 3 and the description in Col 10 lines 18-30 teaches that "conveyor (36) is preferably formed of a two-strand plastic link belt, but could also be a disk or other suitable conveyor". The examiner takes the position that because of the material composition of the conveyor being plastic, the description of its position relative to the vessels inside of it and the figure 3 showing of (36)'s flexibility around sprockets (140) that flexibility is an inherent property of the plastic conveyor that bends around the device all within a "substantially horizontal plane".

CLAIM 5

With regard to claim 5, appellant argues:

In addition to Skotnikov et al. not teaching or suggesting a control unit that determines an erythrocyte sedimentation rate, there is no teaching or suggestion in Skotnikov et al. that the continuous conveyor 36 is flexible as required in the claimed combination.

The argument with regard to the control unit is responded to above in claim 1's treatment. Figure 3 and the description in Col 10 lines 18-30 teaches that "conveyor (36) is preferably formed of a two-strand plastic link belt, but could also be a disk or other suitable conveyor". The examiner takes the position that because of the material composition of the conveyor being plastic, the description of its position relative to the vessels inside of it and the figure 3 showing of (36)'s flexibility around sprockets (140) that flexibility is an inherent property of the plastic conveyor that bends around the device all within a "substantially horizontal plane".

CLAIM 6

With regard to claim 6, appellant argues:

Skotnikov et al. does not provide any teaching or suggestion for elements that are interconnected wherein each of the elements comprise a single seat for receiving a test tube having biological fluid therein as claimed. At most, Skotnikov et al. discloses vessels 32 that contain soil samples and not biological fluid as claimed. Skotnikov et al. does not provide any teaching or suggestion that the vessels 32 are test tubes as featured in the present invention.

The examiner respectfully disagrees. Skotnikov et al. teach "the links in the belt [conveyor] are sized to snugly fit about an outer perimeter of vessels (32)" which teaches that each link comprises a single seat that is capable of carrying a test tube (i.e., vessel 32) (Col. 10 lines 21-23).

CLAIM 7

With regard to claim 7, appellant argues:

Although Skotnikov et al. discloses that agitators 40 agitate the contents of a vessel 32, there is no teaching and no suggestion that the agitators 40 rotate the vessel 32 as required in the claimed combination. Claim 7 provides a very specific definition of how the test tubes are stirred. Claim 7 requires that each holder is mounted for movement such that each holder is rotatable with respect to an adjacent holder about a horizontal axis that is parallel to the traveling direction of the flexible chain member. Such features are not disclosed in Skotnikov et al.

The Examiner points to both the agitators (40 and 50) and the capability of sprockets (140) to rotate an adjacent holder about a horizontal axis parallel to the traveling direction of the conveyor. In both interpretations, each of said holders are capable of being rotatable with respect to an adjacent holder and the fluid is being stirred is interpreted as an inherent property of both interpretations.

CLAIM 16

With regard to claim 16, appellant argues:

Although Skotnikov et al. discloses a plurality of detectors that determine various characteristics of soil samples, none of the detectors in Skotnikov et al. detect levels of biological fluid in test tubes as claimed. In fact, Skotnikov et al. does not teach or suggest a sedimentation area as claimed.

As addressed above, Skotnikov et al. teach at least two detectors that are capable of detecting various different "levels" (levels of organic matter, soil acidity, carbon content, alkali

soluble fraction, etc are taught to be detected as can be seen above) and that further each of these levels is interpreted as being capable of being detected within a biological fluid.

CLAIM 17

With regard to claim 17, appellant argues:

Skotnikov et al. only discloses that vessels 32 are passed from one station to another station wherein different tests are conducted on the soil samples contained in the vessels 32 to determine different characteristics of the soil samples. However, there are not two sedimentation areas in the arrangement of Skotnikov et al. The sedimentation areas of the present invention provide an area of the closed path in which the holders are passed along with the test tubes so that the biological fluid in the test tubes settle so that the level of the biological fluid after agitation can be detected.

The Examiner respectfully disagrees and asserts that a second sedimentation area is interpreted broader than appellant is interpreting the term and is believed to be an inherent property of the Skotnikov device that is present after a second agitator such as (40, 50, or even sprocket 140). See above discussion of agitators and "levels" for additional response.

CLAIM 21

With regard to claims **21-28**, appellant should note that the Examiner has taken the position that each of these claims includes several intended use recitations and that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regard to claim 21, appellant does not provide any new arguments with relevance to the limitation of "an extractor" that is recited in this claim. As such, a response to the restated arguments can be seen above and a teaching of the extractor is maintained to exists within Skotnikov's robotic manipulator (Col. 10 lines 48-50) that is capable of extracting tubes.

CLAIM 22

With regard to claim 22, appellant argues:

Although Skotnikov et al. does teach a washer 104 and dryer 106 can be a robotic manipulator that injects water into vessels 32, removes vessels 32 from conveyor 36 to dump out water, replaces vessels 32 in conveyor 36 and heats vessels 32 to dry them, Skotnikov et al. does not disclose that the robotic manipulator removes the vessels 32 and distributes them to containers as claimed. As such, the prior art as a whole takes a different approach and fails to teach or suggest each and every feature of the claimed combination.

The examiner respectfully disagrees and reasserts that the separate robotic manipulators in line D and in line J (Col. 10 line 60-61) are capable of moving tubes into and out of the holder.

CLAIM 23

With regard to claim 23, appellant does not provide any new arguments with relevance to the new limitation of "automatic manipulators" but robotic arms are maintained to be inherently "automatic" in nature given their robotic characteristics.

CLAIM 24

With regard to claim 24, appellant does not provide any new arguments with relevance to the new limitation of the device's capability of "moving single test tubes from a rack of test tubes

and inserting them into holders". In response, it is maintained that automatic manipulators as taught above by Skotnikov as robotic arms are capable of accomplishing this intended use.

CLAIM 25

With regard to claim 25, appellant does not provide any new arguments with relevance to the new limitation of a "setup unit". As such it is maintained that Skotnikov's teaching of a sample prep line (12) that is located above the flexible member (Fig. 1 (36)).

CLAIM 26

With regard to claim 26, appellant argues:

Skotnikov et al. only discloses a soil preparation line 12 that includes an unpacking unit 20, mixing chamber 22, water valve 24, filter 26, humidity meter 28 and volume doser 30. However, the soil preparation line 12 of Skotnikov et al. is not situated above a continuous flexible member as featured in the present invention. Figure 1 of Skotnikov et al. clearly shows that the soil preparation line 12 is located at a position lateral to the conveyor 36.

The Examiner responds by asserting that the appellant has not shown that the soil prep line is not in fact above the vessels held within the conveyor line. As such, it is maintained that Skotnikov's teaching of loading a soil slurry sample of 5ml from meter (28) by volume doser (30) and feeding this into a first cuvette or vessel (32) (Figure 1) inherently includes within it that the doser must be above the vessel (32) and therefore above the conveyor line (i.e. continuous flexible member) for this to be accomplished without the contents of the vessel falling out (Col. 3 lines 30-45).

CLAIM 27

With regard to claim 27, appellant argues:

Appellant respectfully disagrees with this interpretation of Skotnikov et al. Column 3, lines 45-52 of Skotnikov et al. only disclose that the soil samples withdrawn from mixing chamber 22 are provided in a humidity meter 28 long enough for a controller to take a number of humidity measurements. This has nothing to do with reading a label on test tubes as claimed in claim 27. The reading of the labels on test tubes of the present invention advantageously provides a determination of which test tubes must undergo a measurement of the sedimentation rate of the sample contained in the test tubes.

The Examiner is taking the position that the broadest reasonable interpretation of the claim considering the lack of actively recited structural characteristics of the "reading station" and instead the recitation of intended use language, includes an interpretation wherein controlling unit (16) is the reading station that is comprised by the setup unit that is capable of automatically reading (i.e., reading is interpreted as taking measurements) the label (i.e., the output from the humidity meter (28) wherein the humidity is attached to said test tubes) wherein the reading is meant to increase the accuracy of the results (i.e., if the results are not accurate the sedimentation rate will not be deemed necessary to measure).

CLAIM 28

With regard to claim 28, appellant argue:

Skotnikov et al. fails to teach or suggest the combination of manipulators that controlled and operated by a central unit as a function of information provided for each test tube by reading stations wherein the manipulators transfer the test tubes in which the sedimentation rate must be measured from the rack to a corresponding holder as claimed.

Given the intended use recitations of this claim, the Examiner maintains that controlling unit (16) is capable of fulfilling the intended use limitations of this claim and functioning as the "central unit".

ISSUE: Whether claims 18-20 are rejectable under 35 U.S.C. 103(a) as being unpatentable over Skotnikov et al. in view of Kaarkainen et al. (US 6,520,313). CLAIMS 18, 19 AND 20

CLAIM 41

See above response for CLAIM 3

CLAIMS 42 and 43

See above response for CLAIM 4

CLAIM 44

See above response for CLAIM 1

CLAIM 46

See above response for CLAIM 5-9

CLAIM 48

See above response for CLAIM 1

CLAIMS 49 and 50

See above response for CLAIM 5-9

CLAIM 51

See above response for CLAIM 1

CLAIM 52

See above response for CLAIMS 5-9

CLAIMS 18-20

Next applicant addresses the rejection over Skotnikov in view of Kaarakainen but does not provide any substantive arguments specific to the individual reference besides those that are reiterated regarding the Skotnikov et al. reference. As responded to above, applicant argues that the Skotnikov reference does not teach or suggest that their stations "determine an erythrocyte sedimentation rate". Again, applicant is reminded that this recitation in the preamble without the recitation of structural components that equip the device to specifically be capable of determining this rate, is viewed as being an intended use and further the device of Skotnikov et al. is interpreted as being capable of performing this intended use in various different lines of their device as asserted above.

ISSUE: Whether claims 29, 30 and 32-34 are rejectable under 35 U.S.C. 103(a) as being unpatentable over Skotnikov et al. in view of Coulter et al. (US 4,609,017).

CLAIMS 29, 30 and 32-34

Again, applicant argues only those limitations that were not relied upon by the examiner using the Coulter reference, but instead were asserted above to be taught by the primary reference, Skotnikov et al. Applicant is directed to the above commentary on the aforementioned limitations argued again in this portion of their brief.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Examiner, Art Unit 1797 Supervisory Patent Examiner, Art Unit 1797

Conferees:

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